SUPREME COURT
FILED
JAN 18 1982
LAURENCE P. GILL, Clerk
Deputy

ORDER DENYING WRIT OF HABEAS CORPUS

Criminal No. 22380

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

In re ROBERT ALTON HARRIS

on Habeas Corpus.

Petition for writ of habeas corpus DENIED.

The stay of execution heretofore granted December 9, 1981, is vacated.

Bird, C.J., and Kaus, J., are of the opinion that the respondent should be ordered to show cause why the relief prayed for should not be granted.

Bird

Chief Justice

J. 81-6512

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

IN THE MATTER OF THE APPLICATION OF	)	
ROBERT ALTON HARRIS	)	HC No. 5841
FOR A WRIT OF HABEAS CORPUS	)	ORDER DENYING WRIT

Having read and considered the petition of ROBERT ALTON HARRIS for a writ of habeas corpus and good cause appearing, it is hereby ordered that the above-entitled action be, and the same is hereby denied for the following reasons:

(1) Statements to psychiatrist Dr. Griswold

Petitioner contends his statements to Dr. Griswold were involuntary and obtained without waiver of counsel. The contention should have been raised upon petitioner's appeal. Petitioner has presented insufficient justification for his failure to present such argument on appeal. In re Walker, 10 Cal.3d 764, 773 (1974). Furthermore, petitioner's contention is without merit.

(2) Testimony of Dr. Griswold

Petitioner complains Dr. Griswold's testimony in which he concluded petitioner was a "sociopath" was irrelevant, did not comply with the notice provisions of Penal Code section 190.3, and was unreliable. Relevancy and compliance with notice requirements have already been concluded to have been met by the California Supreme Court in petitioner's direct appeal. See People v. Harris, Crim. No. 20888, 28 Cal.3d 935, 961 (1961). As to reliability, petitioner presents insufficient facts justifying failure to present the issue on direct appeal. Even if such justification is met, the contention has no merit.

(3) Special Circumstances

Petitioner argues the three special circumstances found to be true with respect to each victim were unlawfully "accumulated,"

petitioner presents insufficient justification for failure to raise the argument on appeal. Even if such justification is met, the contention has no merit.

(4) Pretrial publicity

Petitioner seeks reconsideration of the decision rendered by the California Supreme Court in People v. Harris, Crim. No. 20888, 28 Cal.3d 935 (1981) regarding prejudicial pretrial publicity in light of two subsequent decisions, Martinez v. Superior Court, 29 Cal.3d 574 (1981) and People v. Williams, 29 Cal.3d 392 (1981). The decisions do not affect the decision in People v. Harris, supra.

(5) Exclusion of jurors due to views on death penalty

Petitioner argues the trial court unlawfully excused jurors due to their inability to return a verdict of death. Further, petitioner complains the trial court failed to instruct prospective jurors of their duty to set aside personal views in the decision whether they could return such a verdict. The California Supreme Court has already denied petitioner's arguments both upon direct appeal in People v. Harris, supra, at 960, and by habeas corpus.

(6) Exclusion of evidence by the trial court

Petitioner contends the trial court erred in refusing to allow admission of evidence relating to the value of the death penalty in deterrence, the penological aspects of life without the possibility of parole, and the inhumanity of the actual process of execution. With respect to the first two areas, petitioner has failed to present sufficient justification for not raising the issue on appeal. Even if such justification is met, the contentions have no merit. With regard to the refusal to allow evidence of the execution process, the California Supreme Court has already denied petitioner's argument upon direct appeal in People v. Harris, supra, at 962.

(7) Instruction of burden of proof in penalty decision

Petitioner complains the trial court failed to instruct the penalty jury that it must be satisfied beyond a reasonable doubt that death is the appropriate penalty. The California Supreme Court has already denied petitioner's argument upon direct appeal in People v. Harris, supra, at 964.

(8) Constitutionality of death penalty statute

Petitioner argues the death penalty statute is unconstitutional due to the failure of its provisions to require rational and consistent application of the penalty of death. Further, the statute is argued to lack provisions insuring meaningful review of the decision to impose death. The California Supreme Court has already denied petitioner's argument upon direct ap-

peal in People v. Harris, supra, at 964.

(9) Constitutionality of death penalty statute

Petitioner further complains the death penalty statute is unconstitutional due to its failure to prevent application of the death penalty in an arbitrary and/or capricious manner. The California Supreme Court has already denied petitioner's argument upon direct appeal in People v. Harris, supra, at 964. Petitioner's request for discovery of those cases in which death was not imposed (special circumstance cases) for purposes of proportionality review is denied.

(10) Psychiatric testimony of Dr. Griswold relating to bias/prejudice

Finally, petitioner contends Dr. Griswold presented an untrue image of his bias/prejudice toward the prosecution when he testified that he is "called on" approximately 1/2 of the time by the defense and approximately 1/2 of the time for the prosecution. Petitioner has failed to present sufficient justification for not raising the issue on appeal. Even if such justification is met, the contention has no merit.

DATED: NOV 24 1981

JUDGE OF THE SUPERIOR COURT

DUPLICATE FILE: CR 44135

COURT OF APPEAL - FOURTH DIST.
FILED
NOV 25 1981
ROBERT L. FORD, Clerk
DEPUTY CLERK

FOURTH APPELLATE DISTRICT

DIVISION ONE

IN RE: ROBERT ALTON HARRIS.

ON

HABEAS CORPUS.

4 CRIM. 13691

San Diego County No. CR 44135

THE COURT:

The issues presented by the petition for writ of habeas corpus filed here November 25, 1981, could have been raised on petitioner's appeal to the Supreme Court, published as People v. Harris, 28 Cal. 3d 935. This Court is not privy to the record which was before the Supreme Court and has no information whether or to what extent the Supreme Court may have already considered or rejected these contentions. Accordingly were we to accept original jurisdiction here we might impermissibly infringe upon the Supreme Court's appellate jurisdiction over this case, which, because of imposition of the death penalty, is exclusive. (Cal Const Art VI Sec. 11) The petition is therefore denied.

Acting Presiding Justice

cc:
County Clerk, San Diego County, 220 West Broadway, San Diego, CA 92101

Office of the Attorney General, 110 West "A" Street, Suite 600, San Diego, CA 92101
MICHAEL J. MC CABE, ESQ., 108 Ivy St., San Diego, CA 92101

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SUPREME COURT, U.S.

NO. 81-6512

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

ROBERT ALTON HARRIS,
Petitioner,
v.
STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

MOTION FOR LEAVE TO PROCEED ON PETITION FOR WRIT OF CERTIORARI IN FORMA PAUPERIS

MICHAEL J. McCABE
108 Ivy Street
San Diego, California 92101
Phone: (714) 231-1181

Attorney for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO._____

ROBERT ALTON HARRIS,	)
	)
Petitioner,	)
	)
v.	)
	)
STATE OF CALIFORNIA,	)
	)
Respondent.	)
	)

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to 18 U.S.C. section 3006A(d)(6) and Rule 46 of this Court, the petitioner, Robert Alton Harris, asks leave to file the attached Petition for Writ of Certiorari to the Supreme Court of the State of California, without prepayment of fees or costs and to proceed in forma pauperis.

Petitioner further requests that an attorney, Michael J. McCabe, be appointed to represent him in this Court. The declaration of petitioner is attached hereto and made a part hereof.

Respectfully submitted,

Dated: April 8, 1982

MICHAEL J. McCABE
108 Ivy Street
San Diego, California 92101
Phone: (714) 231-1181

Attorney for Petitioner

DECLARATION OF ROBERT ALTON HARRIS
IN SUPPORT OF MOTION TO PROCEED IN
FORMA PAUPERIS

STATE OF CALIFORNIA)
) ss
COUNTY OF MARIN)

I, ROBERT ALTON HARRIS, declare the following to be true and correct under penalty of perjury:

1. I am the petitioner in the petition for writ of certiorari which accompanies this motion.

2. I was accorded appointed counsel to represent me both in the Superior Court of the State of California and on my automatic appeal to the Supreme Court of California.

3. I am completely indigent, and have no funds or assets with which to pay the docket fee or any costs associated with this petition.

4. If my petition for writ of certiorari is granted, I respectfully request that the court appoint Michael J. McCabe, Savitz & McCabe, 108 Ivy Street, San Diego, California 92101, (714) 231-1181, to represent me.

Executed on February 10, 1982 at San Quentin, California.

Robert Alton Harris
ROBERT ALTON HARRIS

On 2-10-82 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert Alton Harris known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY PUBLIC